

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE NAVY
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

EXPORT OF NAVAL VESSELS
THAT MAY CONTAIN POLYCHLORINATED BIPHENYLS
FOR SCRAPPING OUTSIDE THE UNITED STATES

**Agreement Between the Department of the Navy and
the United States Environmental Protection Agency
EXPORT OF NAVAL VESSELS
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PARTIES

1. The United States Environmental Protection Agency ("EPA") and the Department of the Navy ("the Navy") are parties to this Agreement .

PURPOSE

2. This Agreement is intended to specify the manner in which the Navy, its agents, and the purchasers of Naval vessels may export such vessels for scrapping while EPA finalizes its proposed PCB management and disposal regulations. This Agreement does not eliminate legal requirements that may be applicable to the actions covered by the Agreement.

COVERED MATTERS

3. This Agreement establishes the conditions under which the Navy and EPA have agreed the Navy and its agents or the purchasers of Naval vessels may export vessels that possibly contain polychlorinated biphenyls (PCBs) for scrapping. This Agreement is intended to be an interim agreement to allow the Navy, its agents, and the purchasers of Naval vessels to transfer vessels for such purposes until EPA's promulgation of a final rule on management and disposal of solid materials containing PCBs that includes provisions applicable to these actions.

4. This Agreement applies to the transfer and export of Naval vessels that may contain PCBs, including in the following uses: (1) shipboard PCB-impregnated felt material, applications of which include, but are not limited to, gaskets in the joints of ventilation ducts, faying or insulating material between dissimilar metals on all ships, and machinery mount insulation; and (2) other PCB uses, including uses as plasticizers or flame retardants in insulation, dried paints, adhesives, rubber mounts, non-metallic components of electrical wire cable systems, PCBs used as dielectric fluid in transformers, capacitors, and other electrical equipment, and other PCB uses discovered during the term of this Agreement. If, during the term of this Agreement, the Navy discovers any additional significant use of PCBs, defined as more than 3 pounds of PCB on any boat, support craft or piece of industrial equipment, it shall inform the Director, Federal Facilities Enforcement Office (2261 A), U. S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, who will determine, in

consultation with the Navy, the extent, if any, to which the terms of the Agreement cover the newly discovered use.

DEFINITIONS

5. The following definitions apply to this Agreement:

- a. "EPA's final rule on PCB management and disposal" means the final rule that is the outgrowth of the rule proposed by EPA on December 4, 1994, 59 Fed. Reg. 62787.
- b. "Naval vessels" means any vessel exported for scrapping that is (1) owned by the Navy or (2) purchased from the Navy, its agents, or subsequent transferees after the date this Agreement becomes effective.
- c. "Export for scrapping" means export for the purpose of the complete demolition of a vessel outside the United States to recover metal and other valuable materials after the date this Agreement becomes effective.
- d. "Purchasers, purchase, and purchased" cover participants in any transaction in which a Naval vessel is transferred.
- e. "Readily removable" means the PCBs or PCB item can be removed in a cost effective and efficient fashion without significant risks to human health and the environment. Objects are not readily removable if the objects must be removed by heat, chemical stripping, scraping, abrasive blasting, or similar process.
- f. "Operated in a seaworthy manner" means the operation of the vessel with water tight integrity, stability, buoyancy, and required propulsion, navigation, water, electrical, air conditioning, firefighting, habitation, and hydraulic systems.

STATEMENT OF FACTS

6. The Navy has provided the following information:

- a. Naval vessels, like the vessels of other vessel-exporting nations, may contain polychlorinated biphenyls (PCBs) in some solid materials, added as plasticizers or fire retardants during the manufacturing process. The types of materials in which such PCBs may be found include, but are not limited to, paints, rubber products, felt gaskets and machinery mounts, adhesives, and electrical cable insulation. The United States no longer allows the manufacture of products to which PCBs have been intentionally added.
- b. Naval vessels may also occasionally contain PCBs in large transformers, large

high and low voltage capacitors, and hydraulic fluids and heat transfer fluids.

c. Many items that may contain PCBs are in locations accessible only by dismantling the vessel's structure, which gives rise to safety and environmental risks. Often, such items are integral to the continuing function of the vessel as a vessel or to maintaining the watertight and structural integrity of the vessel.

d. The Navy is authorized by Congress to sell obsolete vessels for scrap. The net proceeds of the sales of obsolete, non-merchant style vessels are deposited into the United States Treasury's miscellaneous receipts. Sales of vessels that may be exported for scrapping tend to bring higher prices than vessels scrapped within the United States and improve the United States' foreign trade balance.

7. Under the current PCB Regulations, which implement section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. Section 2605(e), no person may process or distribute in commerce any PCB, or any PCB Item at levels greater than or equal to 50 ppm, for export from the United States for disposal. Because Naval vessels may contain materials with levels of PCBs regulated for disposal, their export for scrapping may constitute a TSCA violation. However, EPA's proposed amendments to the PCB regulations (59 FR 62788, December 6, 1994) stated that EPA would reconsider its current regulatory prohibitions on export. The Navy and EPA anticipate that EPA's final rule on PCB management and disposal shall be consistent with the approaches taken in this Agreement.

REQUIREMENTS AND DELIVERABLES

8. The Navy, its agents, and subsequent purchasers of its vessels shall not export any vessels that may contain PCBs for scrapping unless such actions are carried out in accordance with the requirements of this Agreement.

9. Within 21 days of the execution of this Agreement, and annually thereafter, EPA will provide the notification in Appendix A of this Agreement to the embassies or alternative designated contacts of all countries that may be scrap-ship importers.

10. Exports of Vessels for Scrapping. Vessels that may contain PCBs may be exported for scrapping if all of the following conditions are met:

a. No exports may occur within 60 days of the execution of this Agreement.

b. At least 30 days before the proposed export, the following items shall be removed and stored and/or disposed of in accordance with the requirements of the PCB Regulations, 40 CFR Part 761:

(1) All transformers and large high and low voltage capacitors that contain dielectric fluids with PCBs in any concentrations and all hydraulic and heat transfer fluids containing PCBs.

(2) Solid items containing polychlorinated biphenyls, when such solid items are readily removable and their removal does not jeopardize the structural integrity of the ship or the ability of the ship to be operated in a seaworthy manner for delivery to the location where it will be scrapped.

c. At least 45 days before the Navy, its agent, or the purchaser of a Naval vessel exports a vessel for scrapping, the Navy, its agent, or the purchaser of the Naval vessel shall notify the United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Compliance (Enforcement, Planning, Targeting and Data Division), Attention: Import-Export Program Director (2222A), 401 M Street, S.W., Washington, D.C. 20460, of its intent to export the vessel for scrapping. Such notice shall contain the following:

(1) The name, address, and telephone number of the party arranging for the export of the vessel.

(2) The country to which the vessel is being exported.

(3) The address of the location within the United States at which the vessel will be located for the 30 days preceding the proposed export.

(4) The current location of the vessel.

(5) Name and address of company conducting any PCB removal activities within the United States, the estimated date of this activity, and a certification by the party or parties responsible for PCB removal that such removal has been or will be conducted per paragraph 10.b. of this Agreement.

(6) Vessel name and registry number.

(7) Estimated date of export.

d. EPA inspectors are allowed access to all parts of vessels intended for scrapping under this Agreement.

e. No more than 14 days after receiving the notice described in paragraph 10.c., EPA shall provide the notification in Appendix B of this Agreement to the embassy of the country to which the vessel is being exported (or the appropriate diplomatic mission if such country does not have an embassy in the United States),

which informs the country that a vessel is being exported pursuant to the program described in Appendix A. The vessel may not be exported for 30 days following the postmark, if mailed, or facsimile transmission of such notice.

11. All contracts between the Navy or its agents and any purchaser of a Naval vessel shall include a copy of this Agreement and a certification by the purchaser that (1) the purchaser has read the Agreement and agrees not to export any vessel for scrapping except in accordance with the Agreement's requirements; (2) the purchaser understands that failure to comply with the Agreement's requirements could result in EPA taking an enforcement action against the purchaser for violating the regulatory ban on the export of PCBs (at concentrations of 50 ppm or greater) for disposal; and (3) that the purchaser understands that he may not resell the vessel except to carry out the purposes of this Agreement (that is, for scrapping overseas) or for any other lawful purpose. All contracts between the Navy or its agent and the purchaser of a vessel for export for scrapping shall require the purchaser to include this information in any subsequent sales contract for that vessel.

BREACH

12. If the requirements of this Agreement are breached by the Navy or any subsequent transferee, EPA may determine that the Agreement is void as to that party, and EPA reserves the right to bring an enforcement action.

TERMINATION

13. This Agreement shall terminate upon the effective date of a new rule covering PCB management and disposal that addresses the export of vessels for scrapping outside the United States, except that, purchasers of Naval vessels, who have purchased such vessels subsequent to execution of this Agreement and prior to the publication of this final rule, shall be required by their contract with the Navy or its agents to comply with the terms of this Agreement provided they have given the notice in paragraph 10.c. of this Agreement within 60 days of the date the final rule is published. EPA may terminate this Agreement at any time, for cause, in writing from the EPA signatory to the Agreement, or his successor, to the Navy signatory to the Agreement or his successor.


OTHER PROVISIONS

14. The adoption of any substantive procedures, standards, or statements for purposes of this Agreement shall not constitute a precedent for the contents of EPA's final rule on PCB management and disposal.

EFFECTIVE DATE

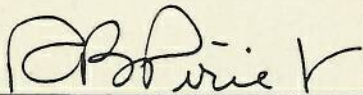
15. This Agreement shall become effective upon execution by authorized representatives of EPA and the Navy. The Navy shall sign and date this Agreement followed by EPA. This Agreement is final and effective on the date EPA signs after the Navy affixes its signature to the Agreement.

THE PARTIES SO AGREE:



The Honorable Steven A. Herman
Assistant Administrator for Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date: 8/6/97



The Honorable Robert B. Pirie, Jr.
Assistant Secretary of the Navy (Installations and Environment)
Department of the Navy

Date: 8/8/97



The Honorable Steven S. Honigman
General Counsel
Department of the Navy

Date: 7/31/87

Appendix A: Notice of Vessel Export Program
Appendix B: Notice of Vessel Export

APPENDIX A

NOTICE OF VESSEL EXPORT PROGRAM

The United States allows the export for scrapping of vessels owned or formerly owned by the U.S. Government. Like the vessels of other vessel-exporting nations, these vessels may contain polychlorinated biphenyls (PCBs) in some solid materials, added as plasticizers or fire retardants during the manufacturing process. The types of materials in which such PCBs may be found include paints, rubber products, felt gaskets and machinery mounts, adhesives, and electrical cable insulation. The United States no longer allows the manufacture of products to which PCBs have been intentionally added. Unlike the practices of most other countries that export vessels, the United States has required the removal of transformers and large high and low voltage capacitors that contain dielectric fluid with PCBs in quantifiable concentrations and all hydraulic and heat transfer fluids containing PCBs before these vessels are exported for scrapping.

APPENDIX B

NOTICE OF VESSEL EXPORT

As we previously informed you, the United States allows the export for scrapping of vessels owned or formerly owned by the U.S. Government. This notice is to inform you that an export to your country is pending.